

No. 14,882

IN THE

United States Court of Appeals  
For the Ninth Circuit

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JAMES A. WILLIAMS,

vs.

UNITED STATES OF AMERICA,

*Appellant,*

*Appellee.*

Upon Appeal from the District Court for the  
District of Alaska, Third Division.

BRIEF FOR APPELLEE.

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**JURISDICTIONAL STATEMENT.**

The petitioner herein is a prisoner incarcerated at McNeil Island Penitentiary, where he is serving sentences imposed by the District Courts for the Territory of Alaska for the Third Division at Anchorage and for the Fourth Division of Alaska at Fairbanks.

The petitioner has invoked the jurisdiction of the Court under the provisions of 28 U.S.C. 347, 837, and 1915. The jurisdictional grounds relied upon by the petitioner are not valid.

The relief which petitioner demands from this Court is a writ of certiorari to the District Court for the

Third Division, Territory of Alaska. It appears that the petitioner may be proceeding for the writ under 28 U.S.C. 1651.

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#### STATEMENT OF FACTS.

An indictment was filed by the grand jury of the District Court, Third Division, Territory of Alaska at Anchorage, Alaska, on April 9, 1954, charging James A. Williams of five counts of larceny by check. The District Court promptly set the time for arraignment of the defendant on the indictment for April 16, 1954.

On April 15, 1954, the defendant's chosen counsel, George Grigsby, withdrew. The defendant executed his affidavit of pauperism and John Dunn, an Anchorage attorney, was appointed by the District Judge to represent the defendant.

The defendant was arraigned on the indictment April 16, 1954 and time for entry of plea was set for April 22, 1954. The defendant entered a plea of not guilty on April 21, 1954. Two days later, however, April 23, 1954, the defendant appeared in Court with his counsel, John Dunn, withdrew his plea of not guilty and entered a plea of guilty to the five counts as charged in the indictment. The defendant waived further time for the imposition of sentence and received the following sentence from the District Court: On Count I, one year and one day to serve; on Count II, one year and one day to serve; on Count III, one year and one day to serve; on Count IV, one

year and one day to serve; and on Count V, one year and one day to serve. The sentences were to run consecutively to each other, and the whole were to run concurrently with the previous sentence imposed on the same defendant by the District Court for the Fourth Division, Territory of Alaska, at Fairbanks, Alaska.

On October 14, 1954, Williams moved to set aside the judgment of conviction and sentence and sought to invoke the jurisdiction of the District Court under the provisions of 28 U.S.C. 2255. The petition was denied by the District Judge October 29, 1954 and the District Court filed a minute order directing that the United States Attorney prepare Findings of Fact and Conclusions of Law. The District Court entered an order December 9, 1954, denying the petitioner's application to vacate judgment of conviction and sentence under 28 U.S.C. 2255.

The file of the District Court reveals that on February 17, 1955 there was received a copy of a notice of appeal filed with the United States Court of Appeals for the Ninth Circuit, from the denial of the District Judge to vacate the sentence of the defendant. This notice of appeal was evidently supported by an "Amendment to a motion filed September 29, 1954," in the above cause and by briefs. Apparently the briefs referred to the petition filed October 14, 1954, for vacation of judgment under 28 U.S.C. 2255.

James Williams petitioned a second time to vacate and set aside the sentence and judgment in the District Court. His second petition for vacation of judgment and sentence was filed with the District Court

April 21, 1955. This petition was denied by the District Court by an order dated April 29, 1955.

On June 22, the petitioner filed with the District Court a "Motion to Run Sentences Concurrently." This motion was denied August 5, 1955. On August 5, 1955, the petitioner moved for a "Court Order" to require the United States Attorney to proceed by way of a criminal information against one Robert Jones. This "Motion for Court Order" was denied by the District Court August 17, 1955. The petitioner then filed a notice of appeal from the ruling of the Court denying his petition for the "Court Order" requiring the United States Attorney to proceed in a prosecution of one Robert Jones.

On August 15, Williams filed his third motion to set aside judgment and sentence under Title 28 U.S.C. 2255. On August 17, 1955, the District Court entered an order denying the motion to vacate and set aside the sentence and judgment and set forth that a similar motion had been entertained and denied on previous occasions.

August 29, 1955, the petitioner filed a handwritten notice of appeal with the District Court and on September 16, 1955 followed this with a typed notice of appeal from the ruling of the District Court denying the petitioner's third petition for a motion to vacate the judgment of conviction and sentence.

On October 11, 1955, the petitioner filed a petition for a "Court Order Directed to Mr. William Hilton, Clerk," and on November 10, 1955, this motion for a "Court Order" was denied by District Judge J. L.



McCarrey. On December 12, 1955, a notice of appeal was filed from the denial of petitioner's motion for "Court Order" to Mr. William Hilton.

The files of the District Court contain voluminous correspondence in connection with the petitioner's case. Included in this correspondence are letters from Mr. Williams containing accusations of misconduct on the part of the District Courts, the United States Marshal, United States Attorneys, reporters of the Court and the Clerk of the Courts.

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#### ARGUMENT.

THE COURT OF APPEALS WILL GRANT THE WRIT OF CERTIORARI ONLY IN AID OF ITS APPELLATE JURISDICTION.

Petitioner has filed a petition for writ of certiorari from this Court to the District Court for the Third Division, Territory of Alaska. A reading of the petition does not clearly reveal on what grounds petitioner demands relief. It is clear, however, that a writ of certiorari from the Court of Appeals to the District Court will only issue under extraordinary circumstances. Jurisdiction in the Court of Appeals to grant the writ of certiorari is found under 28 U.S.C. 1651. It has been held consistently that the writ will only issue in aid of the Court's appellate jurisdiction.

*Travis County v. King Iron Bridge & Manufacturing Company*, (CA 5) 92 F. 690;

*United States ex rel. Montana Ore Purchasing Co. et al. v. Circuit Court, Ninth Circuit, District of Montana, et al.*, (CA 9) 126 F. 169;

*Turner v. United States*, (CA 8) 14 F. 2d 360;  
*Minnesota & Ontario Paper Co. et al. v. Molyneaux, District Judge*, (CA 8) 70 F. 2d 545;  
*Lavinthal v. I. T. S. Company*, (CA 3) 55 F. 2d 232;  
*Pickwick-Greyhound Lines, Inc. v. Shattuck*, (CA 10) 61 F. 2d 485.

Petitioner has appealed from the order of December 9, 1954 denying his motion to vacate the judgment and set aside the sentence under 28 U.S.C.A. 2255.

This Court on April 7, 1955 dismissed his appeal in the case of James A. Williams v. United States of America, Miscellaneous No. 428.

Petitioner has signed a notice of appeal from the ruling of the District Court on August 5, 1955 for a "Court Order" requiring the United States Attorney to bring criminal proceedings against one Robert Jones. It is clear the United States Attorney has discretion to refuse to bring criminal proceedings and should properly do so under the circumstances here.

Petitioner has filed a notice of appeal from the ruling of the District Court of August 17, 1955 denying his third motion to vacate and set aside the sentence under the provisions of 28 U.S.C.A. 2255. It has been held repeatedly that the courts are not required to entertain successive motions brought under 28 U.S.C.A. 2255.

Petitioner has filed a notice of appeal from the ruling of the District Court of November 10, 1955

for a "Court Order" to the Clerk of the Court requiring Mr. Hilton, the clerk, to furnish the petitioner with the names and addresses of each member of the Grand Jury attending the District Court for the 1955 term. The records and files disclose that the Clerk of the Court, Mr. William Hilton, furnished to petitioner the name of the foreman of the Grand Jury for the 1955 term and the address of the foreman in a letter under the date of October 24, 1955. It is submitted that on the allegations made by this petitioner that this application for a Writ of Certiorari should be denied.

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#### CONCLUSION.

The examination of the files and the records of the District Court should determine that the petitioner here is not entitled to prevail in his application for Writ of Certiorari, and that he is entitled to no other writ or any other form of relief from this Court. His application should be denied.

Dated, Anchorage, Alaska,  
March 3, 1956.

Respectfully submitted,

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